

International Journal of Legal Information

the Official Journal of the International Association of Law Libraries

Volume 36

Issue 2 Summer 2008 - *Global Challenges & the
Indian Legal System*

Article 14

9-18-2009

Development of Human Rights in an Indian Context

S. Radhakrishnan
Judge, Bombay High Court

Follow this and additional works at: <http://scholarship.law.cornell.edu/ijli>

The *International Journal of Legal Information* is produced by The International Association of Law Libraries.

Recommended Citation

Radhakrishnan, S. (2008) "Development of Human Rights in an Indian Context," *International Journal of Legal Information*: Vol. 36: Iss. 2, Article 14.

Available at: <http://scholarship.law.cornell.edu/ijli/vol36/iss2/14>

This Article is brought to you for free and open access by the Journals at Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in International Journal of Legal Information by an authorized administrator of Scholarship@Cornell Law: A Digital Repository. For more information, please contact jmp8@cornell.edu.

Development of Human Rights in an Indian Context

S. RADHAKRISHNAN*

Human Rights - Definitions

Albert Einstein, in an Address in Chicago observed:

[t]he existence and validity of human rights are not written in the stars. The ideals concerning the conduct of men towards each other and the desirable structure of the community have been conceived and taught by enlightened individuals in the course of history. Those ideals and convictions which resulted from historical experience, from the craving for beauty and harmony, have been readily accepted in theory by man - and at all times, have been trampled upon by the same people under the pressure of their animal instincts. A large part of history is therefore replete with the struggle for those human rights, an eternal struggle in which a final victory can never be won. But to tire in that struggle would mean the ruin of society.¹

Mahatma Gandhi, an apostle of non-violence, wrote with passionate sincerity long decades ago:

The contrast between the rich and the poor today is a painful sight. A non-violent system of Government is clearly an impossibility, so long as the wide gulf between the rich and hungry millions persists. The contrast between the palaces of New Delhi and the miserable hovels of the poor laboring class nearby, cannot last one day in a free India in which the

* Judge, Bombay High Court, holds an LL.M. Degree from the University of Bombay (1979), and was awarded a Ph.D. in Law by the University of Mumbai in 2005. He practised law as an Advocate for twenty-five years, mainly in the Bombay High Court, focusing on constitutional, civil, labor, criminal, company, and service matters, and also specializing in civil writs involving constitutional and administrative law. He was appointed Judge of the Bombay High Court in 1996.

¹ Albert Einstein. IDEAS AND OPINIONS, New York: Random House (1954).

poor will enjoy the same power as the richest in the land. A violent and bloody revolution is a certainty one day, unless there is voluntary abdication of the riches and the power that riches give and sharing them for the common good.

According to me, the economic constitution of India, and for the matter of that of the world, should be such that no one under it should suffer from want of food and clothing. In other words, everybody should be able to get sufficient work to enable him to make the two ends meet. And, this ideal can be universally realized only if the means of production of elementary necessities of life remain under the control of the masses. These should be freely available to all as God's air and water are, or ought to be; they should not be made a vehicle of traffic for the exploitation of others. Their monopolization by any country, nation or group of persons would be unjust.²

Dr. Patyulin says:

Socialism has proved that genuine, not illusory, individual freedom can be achieved only if society and the State consistently carry out a series of wide ranging measures. It is not enough to proclaim freedom. What is vital is to provide conditions in which all can exercise it."

The right to work, to education, to maintenance in old age, to disability benefits and to free medical service made it possible for everyone really to exercise a whole number of social and political rights and liberties. As for the political freedoms - freedom of speech, of the press, of assembly, processions and demonstrations - the Soviet state not only made them into law, but also guaranteed them by nationalizing the mass media such as publishing houses, radio stations, newspapers, magazines, recreation centers, etc. They came to belong to society as a whole and were used in its interest.³

² YOUNG INDIA, 15th November, 1928.

³ HUMAN RIGHTS IN SOCIALIST SOCIETY, Novosti Press Agency: Moscow, 1981, pp. 8, 9.

Human rights, as the term is most commonly used, are the rights that every human being is entitled to enjoy and to have protected. The underlying idea of such rights - fundamental principles that should be respected in the treatment of all men, women and children - exists in some form in all cultures and societies. The contemporary international statement of those rights is the Universal Declaration of Human Rights.

The declaration covers two broad sets of rights. One set is known as Civil and Political Rights. The other set of rights is known as Economic, Social and Cultural Rights. In the words of the declaration, these two sets of rights aim to give all people “freedom from fear and want.” Both sets of rights must be protected as the “foundation of freedom, justice and peace in the world.”

It is the responsibility of governments to protect the human rights proclaimed by the declaration. Under the provisions of Civil and Political Rights, all governments are to protect the life, liberty and security of their citizens. They should guarantee that no-one is enslaved and that no-one is subjected to arbitrary arrest and detention or to torture. Everyone is entitled to a fair trial. The rights to freedom of thought, conscience, religion, and to freedom of expression are to be protected.

Under the heading of Economic, Social and Cultural Rights, all governments are expected to try progressively to improve the living conditions of their citizens. For example, they should try to guarantee the right to food, clothing, housing and medical care, the protection of the family and the right to social security, education and employment. They are to promote these rights without discrimination of any kind.

The conventional wisdom had been that human rights are indivisible, meaning that respect for civil and political rights could not be divorced from the enjoyment of economic, social and cultural rights. Expressed another way, authentic economic and social development could not exist without the political freedom to participate in that process, including the freedom of dissent.

Here too, views diverged. Some governments argued that strict measures curbing political freedoms were necessary to get their economies going. Some argued that priorities must be established: what was the point of talking about the establishment of courts and reforming the prison system when the pressing issue was ending starvation and seeking relief from crippling foreign debt?

Stemming in part from the one-sided interpretation of the term *human rights*, the concept of *development* also came to be regarded as a human aspiration separate from the achievement of human rights. This was despite the fact that at least half the 30 articles of the Universal Declaration of Human Rights specify the Economic, Social and Cultural Rights, which constitute the core of much of the world's development efforts.

The right to development was elaborated in the 1986 General Assembly Declaration on the Right to Development. It emphasizes the importance of economic, social and cultural rights and establishes that achieving these is both an individual and a collective responsibility. States have the primary responsibility for creating national and international conditions favorable to the realization of the right to development.

Although the rights to life, liberty and security of person are universally recognized, an estimated 120 million people have been killed in this century. These deaths have occurred both in peacetime and in armed conflict as a result of government intervention, including tens of thousands sentenced to death or executed or who have disappeared in over 60 countries in the last decade. The toll of economic injustice and deprivation is no less horrendous: 14 million children die every year before they reach the age of five, mainly due to malnutrition.

Slavery is banned in international law. Yet some 200 million people are held in conditions amounting to slavery. This includes some 100 million children who exist by performing back-breaking labor, prostitution and begging. It also includes adult bonded laborers and women forced into marriage below the age of consent.

Torture is another evil that has been internationally outlawed. But no amount of rhetoric can hide the fact that the torture and ill-treatment of prisoners in prisons, police stations or secret detention centers is reported from over 100 countries today. That is more than half the countries of the world.

Despite guarantees of freedom of expression and association, prisoners of conscience - people jailed solely for the non-violent exercise of their human rights - are held in more than 60 countries. That is one third of the member states of the United Nations. Estimates of the numbers of political refugees run to 14-17 million, with between 12 and 24 million internally displaced people. On the economic, social and cultural side, the

figures are profoundly disturbing. Worldwide, nearly 140,000 children under five years old die from the combined effects of hunger and disease every three days.

Over 100 million people were affected by famine in the opening year of this decade. More than a quarter of the world's people do not get enough food and nearly one billion go hungry. More than one billion people still lack access to safe water and nearly 1.5 billion people worldwide lack access to health services.

Human Rights Through the Enhanced Concept of Article 21 of the Constitution of India

Article 21 of the Constitution of India is the heart and soul of our Constitution. Its scope is being widened in an ever expanding horizon, by various judicial pronouncements.

Under the American Constitution, the 5th amendment played a vital role, as it lays down, "no person shall be deprived of his life, liberty or property, without due process of law". That clause has been the main source of judicial review in the United States of America. The word "due" has been interpreted to mean "just," "proper" or "reasonable" by various judgments. What is "just" or "reasonable" has varied from the facts and situations of each case, but has led to a healthy development of U.S. law.

The major landmark decision which led to the widening concept of Article 21 is *Maneka Gandhi V. Union of India*,⁴ wherein a broad interpretation was adopted. In *Maneka*, a number of progressive propositions were made to make Article 21 more meaningful. The earlier view that Article 21 was a Code by itself was rejected. Articles 14, 19 and 21 were held to have close connection. According to Judge Krishna Iyer, no article pertaining to a Fundamental Right is an island in itself. Just as a man is not dissectible into separate limbs, cardinal rights in an organic constitution have a synthesis.

In *Maneka*, Article 21 was given an expanded meaning to read the ambit of the Fundamental Rights rather than attenuate their meaning and content by a process of judicial construction. Judge Iyer remarked, "The spirit of man is at the root of Article 21"..."personal liberty makes for the worth of the human person" and "travel makes liberty worthwhile." According to Judge Bhagwati, in *Fransis Coralie*,

⁴ *Maneka Gandhi v. Union of India*, 1 SCC 248 (1978).

[w]e think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as, adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and missing and coming along with fellow human beings.⁵

Similarly, in *P.Rathinam v. Union of India*, the Supreme Court interpreted "life" as

[t]he right to live with human dignity and the same does not connote continued drudgery. It takes within its fold some of the fine graces of civilization which makes life worth living and that the expanded concept of life would mean the tradition, culture and heritage of the person concerned.⁶

Right to Earn a Livelihood

In *Olga Tellis et. al. v. Bombay Municipal Corporation et. al.* (7), the petitioners before the Apex Court lived on either side of the pavements or in slum areas in the city of Bombay. The then Chief Minister of Maharashtra had made an announcement that all pavement dwellers in the city of Bombay will be evicted forcibly and deported to their respective places of origin or removed to places outside the city of Bombay. The Chief Minister, in furtherance of this announcement, directed the Commissioner of Police to provide necessary assistance to the Bombay Municipal Corporation to demolish the pavement dwellings and deport the pavement dwellers.⁷ The announcement was made on the apparent justification that it was a very inhuman existence; the structures were flimsy and open to the elements, and during the monsoon, there was no way these people could live comfortably.

These pavement and slum dwellers approached the Supreme Court relying on their rights under Article 21 of the Constitution of India which guarantees that no person shall be deprived of his life except according to procedure established by law. The pavement/slum dwellers did not contend that they have a right to live on the pavements, but they contended that they have a right to life, a right which cannot be exercised without the means of livelihood. The Supreme Court held that

⁵ *Francis Coralie v. U.T. of Delhi*, 1 SCC 608 (1981).

⁶ *P. Rathinam v. Union of India*, 3 SCC 394 (1994).

⁷ *Olga Tellis v. Bombay Municipal Corporation* (AIR 1986 SC 180)

the question which we have to consider is whether the right to live includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right of life conferred by Article 21 of the Constitution is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right of life. An equally important facet of that right is the right to livelihood, because no person can live without the means of living – that is the means of livelihood. If the right to livelihood is not treated as a part of livelihood to the point of abrogation, such deprivation would not only denude the life of its effective content and meaningfulness, but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life.⁸

The Supreme Court held further that in view of the fact that Article 39(a) and 41 of the Constitution of India require the State to secure to the citizens an adequate means of life and the right work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to livelihood. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21 of the Constitution of India.⁹

In *Delhi Transport Corporation v. D.T.C. Mazdoor Congress*, wherein the services of respondents-employees were long back regularized, however, the management found that the respondents-employees had become

⁸ Id.

⁹ Id.

inefficient in their work and started inciting other staff members not to perform their duties.¹⁰ They were served with termination notices under Regulation 9(b) of the DRTA (Conditions of Appointment and Service) Regulations 1952, where it was provided that the services of an employee of the Authority may be terminated without any notice or pay in lieu of notice for any of the misconducts contained in the said Regulation. The Delhi High Court struck down the provision contained in Regulation 9 and in Special Leave Petition filed at the behest of the management, the Supreme Court affirmed the view taken by the High Court.

The Supreme Court held that there is a need to minimize the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however high-placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual's whims and fancies. The Supreme Court, therefore, held, "the right to life includes right to livelihood. The right to livelihood therefore cannot hang on to the fancies of individuals in authority. The employment is not a bounty for them nor can its survival be at their mercy."

Right to Shelter

In *Chameli Singh v. State of UP*, the facts were that the agricultural land of the petitioners was sought to be acquired for construction of houses for Dalits.¹¹ Notification under Section 4(1) of the Land Acquisition Act, 1894 was issued and declaration under Section 6 was also published, simultaneously there was a dispensation with the inquiry under Section 5-A of the Act.

The Appellants before the Supreme Court contended, among other grounds, that on account of acquisition, the appellants will be deprived of their lands, which is the only source of their livelihood. This, they argued, would violate Article 21 of the Constitution. In that context, the Supreme Court held in the aforesaid case that -

Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light,

¹⁰ *DTC v. DTC Mazdoor Congress* (AIR 1991 SC 101).

¹¹ *Chameli Singh V. State of UP* (AIR 1996 SC 1051).

pure air and water, electricity, sanitation and other civil amenities like roads so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head, but includes the right to all of the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live, should be deemed to have been guaranteed as a fundamental right.

In *Shantistar Builders v. Narayan K. Totame*, the respondent had filed a writ petition under Article 226 of the Constitution before the Bombay High Court challenging permission to the builders to escalate the rates in respect of construction permitted on exempted land under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976.¹² The High Court observed that the petition had become infructuous, but directed monitoring of the same. This direction in regard to monitoring had been challenged by the builder in the appeal by special leave.

The Supreme Court held that basic needs of man have traditionally been accepted to be three: food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to a decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect: physical, mental and intellectual. The Constitution aims at ensuring the fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen be ensured of living in a well-built comfortable house, but a reasonable home, particularly for people in India, can even be mud-built thatched house, or a mud-built fire-proof accommodation.

Right to Dignity

In *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*, the subject matter under consideration regarded the right of a detainee.¹³ The petitioner-detainee in that case was a British national and was

¹² *Shantistar Builders V. Narayanan Khimalal Totame* (1990) 1 SCC 520.

¹³ *Francis Coralie Mullin V. The Administrator, Union Territory of Delhi and Ors* (AIR SC 746).

arrested and detained in the Central Prison, Tihar. While in Jail, the detainee experienced a number of difficulties in meeting with her lawyer, her relations, and she was allowed to meet her young daughter only once a month. The restrictions on interviews with her lawyer and daughter were imposed by the authorities by virtue of Clause 3(b)(i)(ii) of the Conditions of Detention, issued in exercise of the powers conferred under Section 5 of the COFEPOSA Act. The detainee challenged the constitutional validity of the aforesaid provision and prayed that the jail authorities be directed to permit her to have interviews with her lawyer and members of her family without complying with the restrictions laid down in the aforesaid clause.

The Supreme Court, while allowing the petition, observed that obviously the right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The Supreme Court held,

But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes the right to live with human dignity and all that goes along with it, viz. the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings. Of course, the magnitude and the content of the components of this right would depend upon the extent of the economic development of the country, but it must in any view of the matter, include right to the basic necessities of life and also the right to carry on such functions, and activities as constitute the bare minimum expression of the human self.

Similarly, in *Consumer Education and Research Centre & Ors. v. Union of India & Ors*, the Supreme Court was moved by human tragedy of modern industry; economic waste and health hazards on account of occupational accidents and diseases.¹⁴ The petitioner in the case was an accredited organization, had filed a petition seeking direction to the respondent to take remedial measures for the protection of the health of the workers engaged in mines and asbestos industries with adequate mechanisms

¹⁴ *Consumer Education and Research Centre & Ors. v. Union of India & Ors* (AIR 1995 SC 922)

for diagnosis and control of the silent killer disease, asbestosis. The Supreme Court allowed the petition and directed the industries concerned

- (a) to maintain and keep maintaining the health record of every worker up to a minimum period of forty years;
- (b) to administer the Membrane Filter Test to detect asbestos fibers;
- (c) to insure all of their workers.

The Supreme Court, while referring to a number of decisions, held that the right to life with human dignity encompasses within its fold some of the finer facets of human civilization which make life worth living. The expanded connotation of life would mean the tradition and cultural heritage of the persons concerned. The right to health for a worker is an integral facet of meaningful right to life to have not only a meaningful existence, but also robust health and vigor, without which a worker would lead a miserable life.

Lack of health denudes a worker's livelihood. Economic necessity compels him to work in an industry, exposed to health hazards due to indigence to bread-winning for himself and his dependents should not be at the cost of health and vigor of the workman. Provision for medical test and treatment invigorates the health of the worker for higher production or efficient service. Continued treatment, while in service or after retirement, is a moral, legal and constitutional duty of the employer and the State. The Supreme Court stated that, therefore, it must be held that the right to health and medical care is a fundamental right under Article 21, read with Articles 39(c), 41 and 43 of the Constitution, and makes the life of the workman meaningful and purposeful with dignity.

The Apex Court further laid down that the right to life includes protection of the health and strength of the worker. This is a minimum requirement to enable a person to live with human dignity. The State, be it Union or State Government, or an industry, public or private, is enjoined to take all such action which will promote health, strength and vigor of the workman during the period of employment. This includes periods of leisure and health, even after retirement as a basic essential to live life with health and happiness.

The health and strength of the worker is an integral facet of the right to life. Denial thereof deprives the workman of the finer facets of life, violating Article 21 of the Constitution. The Supreme Court emphasized that the right to human dignity, development and personality, social protection, and the right to rest and leisure are fundamental human rights to a workman.

These are assured by the Charter of Human Rights, in the Preamble and Article 38 and 39 of the Constitution. Facilities for medical care and health against sickness ensures stable manpower for economic development and would generate devoting to duty and dedication to give the workers' best physically as well as mentally in production of goods or services.

The health of a worker enables him to enjoy the fruits of his labor, keeping him physically fit and mentally alert for leading a successful life, economically, socially and culturally. Medical facilities to protect the health of the workers are, therefore, fundamental and human rights to the workmen.

Right to Prompt Medical Aid for Accident Victims

In *Parmanand Katara v. Union of India and ors*, the petitioner, a human rights activist, prayed for a direction to the Union of India that every injured citizen brought for treatment in cases of accidents should be given immediate medical aid to preserve life, and thereafter the procedural criminal law should be allowed to operate in order to avoid negligent death.¹⁵ In the event of a breach of such direction, apart from any action that may be taken for negligence, appropriate compensation should also be made admissible.

An incident reported in a newspaper was cited in the petition. A scooter driver was knocked down by a speeding car. Upon seeing the bleeding scooter driver, a person who was on the road picked up the injured man and took him to the nearest hospital. There, the doctors refused to attend to the injured person and told the Good Samaritan that he should take the patient to a different hospital located some 20 kilometers away which was authorized to handle medico-legal cases. The Samaritan carried the victim to the other hospital. He lost no time on the way to the other hospital, but before he could reach it, the accident victim succumbed to his injuries.

The Supreme Court held that there can be no second opinion that preservation of human life is of paramount importance. That is so because once a life is lost, the status quo ante cannot be restored, as resurrection is beyond the capacity of man. It makes no difference if the patient is an innocent person or a criminal liable to punishment under the laws of the society. That is because it is the obligation of those who are in charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished. Social laws do not contemplate death by negligence to be tantamount to legal punishment.

¹⁵ *Parmanand Katara V. Union of India* (1989) 4 SCC 286.

The Supreme Court has further laid down that Article 21 of the Constitution casts the obligation on the State to preserve life, and observed:

A doctor at the Government hospital positioned to meet this State obligation is therefore duty bound to extend medical assistance for preserving life. Every doctor, whether at a government hospital or otherwise has the professional obligation to extend services with due expertise for protecting life. No law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure, whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give away.

The Supreme Court had directed that this decision be published in all journals and adequate publicity be given to it. Unfortunately, even as of this date, a substantial number of doctors, hospitals, police personnel and lay people are totally unaware of it. As a result, the same old practice of police preparing a panchanama,¹⁶ before taking the victim to the hospital. Most of the non-government hospitals refuse to admit such road accident victims, resulting in their deaths. More than half of these victims' lives could have easily been saved if prompt medical care had been provided. It is high time the above judgment is made a part of the study of medical students, as well as for police personnel during their training.

Right to Have a Proper Home for Women and Children

In *Vikram Deo Singh Tomar v. State of Bihar*, the petition arose upon a letter received from the Yuva Adhivakta Kalyan Samiti, Sasaram, District Rohtas (Bihar).¹⁷ The letter complained that the female inmates of the "Care Home" Patna (Bihar) are compelled to live under inhuman conditions in an old dilapidated building, that they were being ill-treated, provided food which is both insufficient and of poor quality, and that no medical attention was afforded to them.

The Supreme Court directed the State Government to provide suitable alternative accommodation expeditiously for housing the inmates of the Care

¹⁶ See, <http://ipc498a.files.wordpress.com/2008/09/what-is-a-panchnama.pdf>.

¹⁷ *Vikram Deo Singh Tomar v. State of Bihar*, AIR 1988 SC 1782.

Home. The Supreme Court observed that our Constitution lays special emphasis on the protection and well being of the weaker sections of society. It seeks to improve their economic and social status on the basis of constitutional guarantees spelled out in its provisions. It shows a particular regard for women and children, notwithstanding the pervasive ethos of the doctrine of equality, it contemplates special provisions being made for them by law. Under Article 21, every person is entitled to a quality of life consistent with his human personality. The right to live with human dignity is the fundamental right of every Indian citizen. The Supreme Court directed that to abide by the constitutional standard recognized by well-accepted principles, it is incumbent upon the State when assigning women and children to these establishments, euphemistically described as "Care Homes," to provide at least the minimum conditions ensuring human dignity.

Right to Gender Justice and Prevention of Sexual Harassment

In *Apparel Export Promotion Council v. A.K. Chopra*(15), the respondent was working as a private secretary to the chairman of the council.¹⁸ It was alleged that he tried to molest a female employee of the Council. The woman was working as clerk-typist at the relevant time. Even though she was not trained to take dictation, the respondent insisted that she should go with him to the business center at the Taj Palace Hotel to take dictation from the chairman. Under pressure from the respondent, she went with him. While the woman was waiting for the director in the room, the respondent tried to sit too close to her, and despite her objection, did not give up his objectionable behavior. After the dictation, he offered to help her type her notes. Again, he tried to sit close to her and touch her despite her objections. He again repeated these overtures later. The respondent tried to molest the woman physically in the lift, and the woman had to save herself by pressing the emergency button of the lift. In the Departmental Enquiry, the authority found that the respondent acted against moral sanctions and that his acts against the woman did not withstand the test of decency and modesty. Considering the fact that the actions of the respondent were subversive of good discipline and not conducive to proper working in the organization where there were a number of female employees, the Council removed respondent from service. The appeal filed by the respondent was also dismissed. Thus, the removal of the respondent for causing "sexual harassment" to the woman-employee was upheld.¹⁹

¹⁸ *Apparel Export Promotion Council v. A.K. Chopra*, (1999) 1 SCC 759.

¹⁹ *Id.*

The respondent filed a writ petition and the single judge allowed the writ petition, holding that the respondent tried to molest and not that the respondent had in fact molested the complainant. The Division Bench, in a Letters Patent Appeal filed by the Council, upheld the decision of the single judge. In the SLP preferred by the Council, the Supreme Court set aside the decisions of the High Court and thereby affirmed the punishment of removal from service inflicted on the respondent.

The Supreme Court held that the action of the respondent projected unwelcome sexual advances, and such an action would be squarely covered by the term "sexual harassment". The Supreme Court held that the observations made by the High Court to that since the respondent did not "actually molest" the female employee, but only "tried to molest" her did not warrant his removal from service. This is contrary to reality and the High Court thus could lose its sanctity and credibility. The behavior of the respondent, according to the Supreme Court, did not cease to be outrageous for want of an actual assault or touch by the superior officer.²⁰

The Apex Court observed that there is no gain saying that each incident of sexual harassment at the place of work results in violation of the fundamental right to gender equality and the right to life and liberty – the two most precious fundamental rights guaranteed by the Constitution of India. As early as 1993, at the ILO Seminar held at Manila, it was recognized that sexual harassment of women at the workplace was a form of "gender discrimination against women". The Supreme Court opined that the contents of the fundamental rights guaranteed in our Constitution are of sufficient amplitude to encompass all facets of gender equality, including prevention of sexual harassment and abuse, and the courts are under a constitutional obligation to protect and preserve those fundamental rights. That sexual harassment of a female at the place of work is incompatible with the dignity and honor of a female and needs to be eliminated, and that there can be no compromise with such violations, admits of no debate.

The Supreme Court observed:

There is no gainsaying that each incident of sexual harassment at the place of work, results in violation of the fundamental right to gender equality and the Right to Life and liberty – the two most precious Fundamental Rights guaranteed by the Constitution of India. In our opinion, the contents of fundamental rights guaranteed in our Constitution

²⁰ Id.

are of sufficient amplitude to encompass all facets of gender equality, including prevention of sexual harassment and abuse and the courts are under a Constitutional obligation to protect and preserve those fundamental rights. That sexual harassment of a female at the place of work is incompatible with the dignity and honor of a female and it needs to be eliminated.²¹

The Supreme Court, while dealing with gender justice, in *Bodhisattwa Gautam v. Subhra Chakraborty*, directed the petitioner to pay a monthly maintenance of 1000 Indian Rupees to the respondent, Subhra, pending the prosecution a case.²² The respondent lodged a complaint against petitioner for the offences punishable under Sections 312, 420, 493, 496 and 498A of the Penal Code. The complaint revealed that there was initially a period of romance between the parties during which the petitioner used to visit the house of the respondent. On one occasion he told her that he was in love with her. He ultimately succeeded, on the basis of assurances to marry her, in developing a sexual relationship with her, and the respondent became pregnant. While in that state, she persuaded the appellant to marry her, but he deferred the proposal on the plea that he had to first obtain his parents' permission; however, he later agreed to marry her secretly, which they did. On the insistence of the appellant, the respondent agreed to an abortion.

Ultimately, the appellant deceived the respondent. Appellant filed an application under Section 482 Cr.P.C. for quashing the prosecution. The High Court dismissed the application, and hence Special Leave Petition was filed by the appellant. While dismissing the SLP, the Supreme Court *suo motu* issued notice to the appellant as to why he should not be asked to pay reasonable compensation per month to the respondent during pendency of the prosecution proceedings. On being *prima facie* satisfied about the allegations made in the complaint, the matter was disposed of by providing that the appellant shall pay to the respondent a sum of Rs.1000 every month as interim compensation during the pendency of the prosecution.²³

The Supreme Court observed that unfortunately, a woman in our country belongs to a class or group of society who are in a disadvantaged position on account of several social barriers and impediments. They have, therefore, been the victim of tyranny at the hands of men with whom they

²¹ Id.

²² *Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 SCC 490.

²³ Id.

fortunately under the Constitution enjoy equal status. Women also have the right to file and the right to liberty; they also have the right to be respected and treated as equal citizens. Their honor and dignity cannot be touched or violated. They also have the right to lead an honorable and peaceful life.

Women, thus, have many types of personalities or roles combined. They are mother, daughter, sister and wife and not play-things for center spreads in various magazines, periodicals or newspapers. Nor can they be exploited for obscene purposes. They must have liberty, freedom and, of course, independence to live the roles assigned to them by Nature so that society may flourish as they alone have the talents and capacity to shape the destiny and character of people in every part of the world. The Supreme Court categorically held that "[r]ape is thus not only a crime against the person of a woman (victim) it is a crime against the entire society."²⁴ It is further held that

it destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is only by her sheer willpower that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim's most cherished Fundamental Right, namely, the Right to Life, contained in Article 21. To many feminists and psychiatrists, rape is less a sexual offence than an act of aggression aimed at degrading and humiliating women. The rape laws do not, unfortunately, take care of the social aspect of the matter and are inept in many respects.

Right to Good Health

In *Vincent Panikurlangara v. Union of India and Ors*, the petitioner sought a prohibition against the import, manufacture, sale and distribution of drugs banned by the Drugs Consultative Committee; the petitioner also asked for cancellation of all licenses authorizing import, manufacture, sale and distribution of such drugs.²⁵ He also sought a direction to the Central Government to constitute a high-powered authority to investigate the hazards suffered by people of the country on account of such drugs being in circulation, and to suggest remedial measures including awarding compensation. He further prayed directions should be given for framing strict

²⁴ Id.

²⁵ *Vincent Panikurlangara v. Union of India and Ors*, (1987) 2 SCC 165.

regulations to ensure standards of drug quality and to ensure the weeding out of some injurious drugs from the market. The petitioner alleged that the drug industry in India is dominated by multinational corporations originally based in the USA, UK, Federal Republic of Germany, Sweden, Japan, and France. According to the petitioner, these corporations have large resources and make huge profits. The control exercised by the Indian government on such corporations is minimal and inadequate. The disease-prone sub-continent of India has been used as pasture ground by these corporations.

The Hathi Committee appointed by the Central Government in its Report submitted in 1974, highlighted the havoc played by these corporations in the Indian scene and pleaded for nationalizing the drug industry in the best interest of the Indian people. The recommendation has not been accepted by the government. According to the petitioner, several drugs banned in the West, after appropriate analytical research are routed into India and on account of India's lack of control and its sluggish enforcement of Indian law, conveniently find their way into the market. What is poison to the human body in the West is equally poison to the people in India, but not knowing the repercussions thereof on people, such drugs freely circulate and are even prescribed for patients.

The Apex Court held that a healthy body is the very foundation for all human activities. In a welfare State, therefore, it is the obligation of the State to create and sustain conditions congenial to good health. The Division Bench of the apex Court referred to some decisions where it decided that it is the fundamental right of everyone in this country, assured under the interpretation given to Article 21, to live with human dignity, free from exploitation. This right derives from the Directive Principles of State Policy, and particularly clauses (e) and (f) of Articles 39, 41 and 42 of the Constitution. The Division Bench agreed with the earlier pronouncement that such right at least, therefore, must include protection of the health and strength of the workers, men, women and children. It must also protect against abuse, and provide opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity, and no State has the right to take any action which will deprive a person of the employment of these basic essentials.

The Supreme Court also observed that maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends

the building of society, of which the Constitution makers envisaged. Attending to public health, as opined by the Supreme Court, therefore is of high priority – perhaps one of the top priorities.

In *Consumer Education & Research Centre & Ors. v. Union of India & Ors.*, the Supreme Court was concerned by the occupational health hazards and disease of the workmen employed in asbestos industries.²⁶ The petitioner, an accredited association, filed a petition seeking remedial measures for the protection of the health of the workers engaged in mines and asbestos industries, with adequate mechanisms for diagnosis and control of asbestosis.

The Supreme Court allowed the writ petition and directed the concerned industries to maintain and keep maintaining the health records of every worker up to a minimum of 40 years from the beginning of employment, or 15 years after retirement or cessation of employment, whichever is later. The Supreme Court directed that each and every worker should be insured and, among other things, directed the Inspector of Factories to send all the workers, examined by the ESI Hospital concerned, for re-examination by the National Institute of Occupational Health to detect whether all or any of them are suffering from asbestosis.

The Supreme Court held that right to health, medical aid to protect the health and vigor to a worker while in service or post-retirement is a fundamental right under Article 21, read with Articles 39(e), 41, 43, 48-A of the Constitution of India, and all related articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person.

Right to Ecology/Environmental Protection

In *F.B. Tarporawala & Ors. v. Bayer India, Ltd. & Ors.*(19), the Municipal Corporation had permitted construction on certain land which was intended for industrial use.²⁷ The Court observed

Industrial growth, yes; but by exposing a large segment of society to the risk of losing lives, no. This apprehension is not imaginary. The Bhopal disaster brought the knowledge of all what a tragedy can be caused by chemical industries. In the wake of what happened there more than a decade ago,

²⁶ *Consumer Education & Research & Ors. v. Union of India & Ors.*, (1995) 3 SCC 42.

²⁷ *F.B. Tarporawala & Ors. v. Bayer India, Ltd. & Ors.* (1996) 6 SCC 58.

industrialists engaged in production of chemicals started thinking of taking precautionary and protection measures to see that if the worst were to befall, how their financial liability could be taken care of.²⁸

The Supreme Court further observed:

In the appeals at hand, we are confronted with a problem which has more serious consequences and which touches the core of Article 21 of the Constitution inasmuch as the very lives of the inhabitants living around the factories in question are in great jeopardy, so much so that any probable accident in the factories may see annihilations of a larger number of inhabitants. Maybe the accident does not take place, as has been submitted by Shri Jaitley, appearing for the respondents. There is, however, no ruling of the same altogether as Bhopal has shown. No risk can, therefore, be taken.²⁹

Right to Life with Human Dignity

In *Kartar Singh v. State of Punjab*, the Court considered several matters.³⁰ These consisted of a number of writ petitions, criminal appeals and SLPs challenging the vires of the Terrorist Affected Areas (Special Courts) Act; the Terrorists and Disruptive Activities (Prevention) Act, 1985 and the Terrorists and Disruptive Activities (Prevention) Act, 1987, commonly known as TADA Acts. The Supreme Court observed:

It is heart-rending to note that day in and day out we come across with the news of blood-curdling incidents of police brutality and atrocities, alleged to have been committed, in utter disregard and in all breaches of humanitarian law and universal human rights as well as in total negation of the constitutional guarantees and human decency. We are undoubtedly committed to uphold human rights even as a part of long standing heritage and as enshrined in our constitutional law. We feel that this perspective needs to be kept in view by every law enforcement authority because the recognition of the inherent dignity and of the equal and inalienable rights of the citizens is the foundation of freedom, justice and peace in the world. If human rights are outraged,

²⁸ Id.

²⁹ Id.

³⁰ *Kartar Singh V. State of Punjab*, (1988) 1 SCC 690.

then the court should set its face against such violation of human rights by exercising its majestic judicial authority.

The Supreme Court further observed:

As we have repeatedly pointed out *supra*, if it is shown to the court that a confession has been extorted by illegal means, such as inducement, threat or promise as contemplated under Section 24 of the Evidence Act the confession thus obtained from an accused person would become irrelevant and cannot be used in a criminal proceeding as against the maker. It may be recalled that Sections 330 and 331 of the Indian Penal Code provide punishment to one who voluntarily causes hurt or grievous hurt as the case may be to extort the confession or any information which may lead to the detection of an offence or misconduct.³¹

The Court went on:

The foundation of Indian political and social democracy, as envisioned in the preamble of the Constitution, rests on justice, equality, liberty and fraternity in a secular and socialist republic in which every individual has equal opportunity to strive towards excellence and of his dignity of person in an integrated egalitarian Bharat. Right to justice and equality and stated liberties which include freedom of expression, belief and movement are the means for excellence. The right to life with human dignity of person is a fundamental right of every citizen for pursuit of happiness and excellence. Personal freedom is a basic condition for full development of human personality. Article 21 of the constitution protects the right to life which is the most precious right in a civilized society. The trinity, that is Liberty, Equality and Fraternity, always blossoms and enlivens the flower of human dignity. One of the gifts of democracy of mankind is the right to personal liberty.

Life and personal freedom are the prized jewels under Article 19 conjointly assured by Articles 20(3), 21 and 22 of the Constitution, and Article 19 ensures freedom of movement. Liberty aims at freedom not only from arbitrary restraint, but also to secure such conditions which are essential from

³¹ Id.

arbitrary restraint, but also to secure such conditions which are essential for the full development of human personality. Liberty is the essential concomitant for other rights without which a man cannot be at his best.³²

Right to Basic Needs

In *Unni Krishnan v. State of AP* (21), the Supreme Court was, *inter alia*, dealing with

- (1) Whether the constitution of India guarantees a fundamental right to education to its citizens?
- (2) Whether there is a fundamental right to establish an educational institution under Article 19(1)(g).³³

The Supreme Court held:

The fundamental purpose of education is the same at all times and in all places. It is to transfigure the human personality into a pattern of perfection through a synthetic process of the development of the body, the enrichment of the mind, the sublimation of the motions and the illumination of the spirit. Education is a preparation for a living, for life, here and hereafter.³⁴

The Supreme Court further observed:

In the context of a democratic form of Government which depends for its sustenance upon the enlightenment of the populace, education is at once a social and political necessity. Even several decades ago, our leaders harped upon universal primary education as a desideratum for national progress. It is rather said that in this great land of ours where knowledge first lit its torch and where the human mind soared to the highest pinnacle of wisdom, the percentage of illiteracy should be appalling. Today, the frontiers of knowledge are enlarging with incredible swiftness. The foremost need to be satisfied by our education is, therefore, the eradication of illiteracy which persists in a depressing measure. Any effort taken in this direction cannot be deemed to be too much.³⁵

³² Id.

³³ *Unni Krishnan V. State of AP*, (1993) 1 SCC 645.

³⁴ Id.

³⁵ Id.

The Supreme Court also observed:

Victories are gained, peace is preserved, progress is achieved, civilization is built up and history is made not on the battlefields where ghastly murders are committed in the name of patriotism, not in the Council Chambers, where insipid speeches are spun out in the name of debate, not even in factories, where are manufactured novel instruments to strangle life, but in educational institutions which are the seed-beds of culture, where children in whose hands quiver the destinies of the future, are trained. From their ranks will come out when they grow up, statesmen and soldiers, patriots and philosophers, who will determine the progress of the land.³⁶

Right to Medical Aid

In *Paschim Bangal Khet Mazdoor Samiti & Ors v. State of W.B. & Anr.*, Petitioner no.2, Hakim Seikh, fell off a train as a result of which he suffered serious head injuries and brain hemorrhage.³⁷ He was taken to the Primary Health Center, and for want of adequate facilities, the Medical Officer referred him to the Diamond Harbour Sub-Divisional Hospital or any other State hospital for better treatment. Hakim Seikh was taken to NRS Medical College Hospital, Calcutta, at about 11:45 p.m. on July 8, 1992. The Emergency Medical Officer in the hospital, after examining him and after taking two X-rays of his skull recommended immediate admission for further treatment. But Hakim Seikh could not be admitted in the hospital as no vacant bed was available in the Surgical Emergency Ward, and the regular Surgery Ward was also full. He was then taken to Calcutta Medical college Hospital at about 12:20 a.m. on July 9, 1992. He was not admitted in that hospital and referred to a teaching hospital in the ENT Neuro Surgery Department on the ground that the hospital had no NET Emergency or Neuro Emergency Department. At about 2:00 p.m. on July 9, 1992 he was taken to Calcutta National Medical College Hospital, but there also he was not admitted on account of non-availability of bed. At about 8:00 p.m. on July 9, 1992 he was taken to the Bangur Institute of Neurology, but on seeing the CT Scan (which was done at a private hospital on payment of Rs. 1310) it was found that there was hemorrhage condition in the frontal region of the head and that it was an emergency case which could not be handled in the Institute.

³⁶ Id.

³⁷ *Paschim Bangal Khet Mazdoor Samiti & Ors. v. State of W.B. & Anr.*, (1996) 4 SCC 37.

At about 10:00 p.m. on July 9, 1992 he was taken to S.S.K.M. Hospital, but there also he was not admitted on the ground that the hospital had no facility of neuro-surgery.

Ultimately, Hakim Seikh was admitted to Calcutta Medical Research Institute, a private hospital, where he received treatment as an in-patient from July 9, 1992 to July 22, 1992. He incurred an expenditure of approximately Rs.17,000 for his treatment. Feeling aggrieved by the indifferent and callous attitude on the part of the medical authorities at the various State-run hospitals in Calcutta in not providing treatment for the serious injuries sustained by Hakim Seikh, the petition was filed in the Court. The Supreme Court held:

The Constitution envisages the establishment of a welfare State at the federal level as well as at the State level. In a welfare State the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare State. The Government discharges this obligation by running hospitals and health centers, which provide medical care to the person seeking to avail of those facilities. Article 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The government hospitals run by the State and the medical officers employed therein are duty-bound to extend medical assistance for preserving human life. Failure on the part of government hospitals to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21. In the present case, there was breach of the said right of Hakim Seikh guaranteed under Article 21 when he was denied treatment at the various government hospitals which were approached, even though his condition was very serious at that time and he was in need of immediate medical attention. Since the said denial of the right of Health Care guaranteed under Article 21 was by officers of the State, in hospitals run by the State, the State cannot avoid its responsibility for such denial of the constitutional right of Hakim Seikh. In respect of deprivation of the constitutional rights guaranteed under Part III of the Constitution the position is well settled that adequate compensation can be awarded by the court for such violation by way of redress in proceeding under Articles 32 and 226 of the Constitution. Hakim Seikh should, therefore,

be suitably compensated for the breach of his right guaranteed under Article 21 of the Constitution.³⁸

Right to Health

In *Consumer Education & Research Centre v. Union of India*, the Supreme Court was moved by the occupational accidents and diseases which remain one of the most appalling human tragedies of modern industry and one of its most serious forms of economic waste.³⁹ The Supreme Court was concerned with the occupational health hazards and diseases to the workmen employed in asbestos industries. The petitioner sought protection of the health of the workers engaged in mines and asbestos industries with adequate mechanisms for diagnosis and control of the silent killer disease, asbestosis. The relation of asbestosis is to lung cancer. The Supreme Court observed,

"The Preamble and Article 38 of the Constitution of India - the supreme law - envisions social justice as its arch to ensure life to be meaningful and livable with human dignity. Jurisprudence is an eye for providing insight into the environment of which it is the expression. It relates the law to the spirit of the time and makes it richer. Law is the ultimate aim of every civilized society, as a key system in a given era, to meet the needs and demands of its time. Justice, according to law, comprehends social urges and commitment. The Constitution commands justice, liberty, equality and fraternity as supreme values to usher in the egalitarian social, economic and political democracy. Social justice, equality and dignity of a person are cornerstones of social democracy. The concept "social justice," which the Constitution of India engrafted, consists of diverse principles essential for the orderly growth and development of personality of every citizen. "Social justice" is thus an integral part of justice in the generic sense. Justice is the genus of which social justice is one of its species. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society and to elevate them to the level of equality to life, a life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor etc. from handicaps, penury to ward off distress and to make

³⁸ Id.

³⁹ *Consumer Education & Research Centre v. Union of India* (2000)(2) SCC 599.

their life livable, for greater good of the society at large. In other words, the aim of social justice is to attain a substantial degree of social, economic and political equality, which is a legitimate expectation. Social security, just and humane conditions of work and leisure to a workman are part of his meaningful right to life and to achieve self-expression of his personality and to enjoy life with dignity; the State should provide facilities and opportunities to enable them to reach at least a minimum standard of health, economic security and civilized living while sharing according to their capacity, social and cultural heritage.⁴⁰

The Supreme Court further held,

The right to health to a worker is an integral facet of meaningful right to life, to have not only a meaningful existence but also robust health and vigor without which a worker would lead a life of misery. Lack of health deprives him of his livelihood. Compelling economic necessity to work in an industry exposed to health hazards due to indigence to bread-winning for himself and his dependents, should not be at the cost of the health and vigor of the workman. Facilities and opportunities, as enjoined in Article 38 should be provided to protect the health of the workman. Provision for medical tests and treatment invigorates the health of the worker for higher production or efficient service. Continued treatment, while in service or after retirement, is a moral, legal and constitutional duty of the employer and the State. Therefore, it must be held that the right to health and medical care is a fundamental right under Article 21, read with Articles 39(e), 41 and 43 of the Constitution, and make the life of the workman meaningful and purposeful with dignity of person. Right to life includes protection of the health and strength of the worker and is a minimum requirement to enable a person to live with human dignity. The State, be it Union or State Government or an industry, public or private, is enjoined to take all such actions which will promote health, strength and vigor of the workman during the period of employment and leisure and health even after retirement as basic essentials to live the life with health and happiness. The health and strength of the

⁴⁰ Id.

worker is an integral facet of right to life. Denial thereof deprives the workman the finer facets of life violating article 21. The right to human dignity, development of personality, social protection, right to rest and leisure are fundamental human rights to a workman assured by the Charter of Human Rights, in the Preamble and Articles 38 and 39 of the Constitution. Facilities for medical care and healthcare to prevent sickness ensures stable manpower for economic development and would generate devotion to duty and dedication to give the workers' best physically as well as mentally in production of goods or services. Health of the worker enables him to enjoy the fruits of his labor, keeping him physically fit and mentally alert for leading a successful life, economically, socially and culturally. Medical facilities to protect the health of the workers are, therefore, the fundamental and human rights to the workmen.

Therefore, we hold that right to health, medical aid to protect the health and vigor to a worker while in service or post-retirement is a fundamental right under Article 21, read with Articles 39(e), 41, 43, 48-A and all related articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person.⁴¹

In *State of Punjab v. Ram Lubhaya Bagga*, the common question which had come up for consideration was the entitlement towards medical expenses of the Punjab Government employees and pensioners as per the relevant rules and government policy.⁴² The Supreme Court observed,

When we speak about a right, it correlates to a duty upon another, individual, employer, government or authority. In other words, the right of one is an obligation of another. Hence, the right of a citizen to live under Article 21 casts an obligation on the State. This obligation is further reinforced under Article 47, it is for the State to secure health to its citizen as its primary duty. No doubt the Government is rendering this obligation by opening government hospitals and health centers, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, to reduce the queue of waiting lists, and it has to provide all

⁴¹ Id.

⁴² *State of Punjab v. Ram Lubhaya Bagga* (1999) 1 SCC 297.

facilities for which an employee looks for at another hospital. Its upkeep, maintenance and cleanliness must be beyond aspersion. It must employ the best of talents and tune up its administration to make an effective contribution. Also, it must bring about an awareness in welfare of hospital staff for their dedicated service, give them periodical, medico-ethical service-oriented training, not only at the entry point but also during the whole tenure of their service. Since it is one of the most sacrosanct and valuable rights of a citizen and equality is sacrosanct, it is a sacred obligation of the State, every citizen of this welfare State looks towards the State for it to perform its obligation with top priority including by way of allocation of sufficient funds.

Right to Life and Scope of Women's Rights

In *C. Masilamani Mudaliar & Ors. v. Idol of Sri Swaminathaswami and ors*, the facts were that the suit property was bequeathed by a will executed by the owner in July 1950 to his wife S, and his cousin's widow J.⁴³ It was stated in the will that the testator was duty-bound to provide maintenance for the two persons and he, having no other family, the property shall be enjoyed by them in equal shares without any right to alienate the property during their lifetimes. If one of them were to die survived by the other, the surviving member shall have the right to enjoy the property in its entirety. The testator died in September 1950, and afterwards the legatees came into possession of the property of J. In 1970, S appointed a power of attorney holder who alienated the property and the appellants purchased the same under a registered sale deed. A suit was filed for declaration that the legatees having succeeded to a limited estate under the will, the alienation made by S was illegal. The trial Court decreed the suit. The Division Bench of the High Court held that the legatees had succeeded to a restricted estate under sub-section (2) of Section 14 of the Hindu Succession Act, 1956 and that, therefore, their rights had not blossomed into absolute estate. The Supreme Court allowed the appeal, and held,

[i]t is seen that if after the Constitution came into force, the right to equality and dignity of the person enshrined in the Preamble of the Constitution, Fundamental Rights and Directive Principles which are a trinity intended to remove discrimination or disability on grounds only of social status or

⁴³ *C. Masilamani Mudaliar & Ors. v. Idol of Sri Swaminathaswami and Ors* (1996)(8) SCC 525.

gender, removed the pre-existing impediments that stood in the way of female or weaker segments of the society.

The Supreme Court further observed, "Article 21 of the Constitution of India reinforces the "right to life."⁴⁴ The Court further held that

[e]quality, dignity of person and right to development are inherent rights in every human being. Life in its expanded horizon includes all that give meaning to a person's life including culture, heritage and tradition, with dignity of the person. The fulfillment of that heritage in full measure would encompass the right to life. For its meaningfulness and purpose every woman is entitled to the elimination of obstacles and discrimination based on gender for human development. Women are entitled to enjoy economic, social, cultural and political rights without discrimination and on a footing of equality. Equally, in order to effectuate the fundamental duty to develop a scientific temper, humanism and the spirit of inquiry, and to strive towards excellence in all spheres of individual and collective activities enjoined in Articles 51-A(h) and (j) of the Constitution of India, facilities and opportunities not only are to be provided for, but also all forms of gender-based discrimination should be eliminated. It is a mandate to the State to do these acts. Property is one of the important endowments or natural assets to accord opportunity, a source to develop personality, to be independent, and a right to equal status and dignity of the person. Therefore, the State should create conditions and facilities conducive for women to realize the right to economic development, including social and cultural rights.⁴⁵

⁴⁴ Id.

⁴⁵ Id.